



**MINUTES OF THE ZONING BOARD OF APPEALS  
ANDOVER, MASSACHUSETTS**

**Conference Room A, 3rd Floor, Town Office, 36 Bartlet Street, Andover, MA 01810**

**July 7, 2016**

The meeting opened at 7:05 p.m.

Present were: David W. Brown, Chair; Carol McDonough, Acting Clerk; Elizabeth Oltman and Lisa Rechisky, Members; Kathy Faulk and Brian Corrigan, Associate Members. Also present was Inspector of Buildings Chris Clemente.

Brown gave an overview of the Zoning Board procedure.

**Petition Number: Z-16-53**

**Premises Affected: 3 Walnut Ave**

**Petitioner: DiCesaro**

**Relief requested: special permit under Art. VIII, §3.3.5 &/or for a variance from Art. VIII, §4.1.2 to construct a 2-story rear addition on an undersized lot that will not meet minimum side yard setback requirements**

**Members sitting: Brown, McDonough, Oltman, Faulk (for Wilson) (absent were Wilson & Bordonaro)**

Oltman drafted the decision to be voted on. Faulk noted that the names of the members voting should be changed to reflect the absence of Wilson & Bordonaro. There being no further revisions of the draft decision, McDonough made a motion to approve the decision as written with the change of names. Faulk seconded the motion & the Board voted (4-0) to approve the draft findings and decision and to grant a special permit under Art. VIII, §3.3.5 with conditions and to deny the variance from Art. VIII, §4.1.2 as moot.

**Petition Number: Z-16-80**

**Premises Affected: 5 Oriole Drive**

**Petitioner: Hershey**

**Relief requested: variance §4.1.2 to construct an addition that will not meet minimum side setback**

**Members sitting: Brown, McDonough, Oltman, Rechisky, Corrigan**

**Alternate: Faulk**

Katie Hershey represented herself and her husband in their request to construct a 1-story addition that would encroach 1' into the minimum side yard depth requirement. Hershey stated that the lot line is irregular in that the it jogs in toward the front of the house at a slight angle therefore the house is not parallel to the lot line. They wish to construct an addition in line with the outside wall closest to the side lot line to facilitate construction. They have spoken with the neighbors, none of whom expressed objection. The Board discussed the option of moving the addition further away from the lot line to a conforming location. Hershey explained the complication that would cause in relation to the interior layout. The Board inquired if the lot shape is characteristic of the neighborhood. Hershey agreed that it is typical adding that the presence of ledge on the right side of the house impacts placement of an addition. She pointed out that the existing pool and garage are near or on ledge. Corrigan felt the encroachment is de minimis. Rechisky made a motion to waive a site view & to close the public hearing. Oltman seconded the motion & the Board voted (5-0) to waive the view and close the hearing. The Board then proceeded to deliberate. McDonough, Oltman & Rechisky agreed that the request is de minimis & that the lot is irregularly shaped. Brown stated that no hardship exists & argued that it

is incumbent on the applicants to make an effort to comply with the zoning bylaw before seeking relief & that a conforming addition can be designed. Corrigan suggested continuing the hearing in order for the architect explain the reasoning why a conforming addition can't be constructed. Rechisky made a motion to re-open the public hearing & continue it to 8/4/16. Oltman seconded the motion & the Board voted (6-0) to continue the public hearing to 8/4/16.

**Petition Number: Z-16-46**

**Premises Affected: 119 Chandler Rd**

**Petitioner: Gowdy**

**Relief requested: special permit §6.1 and/or variances §§6.1.2.1, 6.1.2.9 to install a wireless communication monopole that will exceed the maximum height and not meet the minimum setback requirement, and for modification of Decision Nos. 2606, 2693, 3772 to allow relocation of wireless communications antennae from existing tower to new monopole**

**Members sitting: Brown, McDonough, Oltman, Rechisky, Faulk**

Attorney Mark Johnson summarized what has occurred since the last meeting: the plan was revised with the alternate location depicts the monopole 119' north of the existing proposed location & it is outside the fall-zone of the guyed tower; verified that per MA Building Code a 100 mph 3-second gust of wind speed is not sufficient to cause failure; and they met with Town Manager & Fire Chief Mansfield regarding locating a monopole on town property & the Town Manager that the Town will not locate monopoles on town-owned parcels. The Board discussed the distance of the proposed monopole from utility lines & the letter from All-Points regarding the failure design at the mid-point so the monopole will fall into itself, as well as the distance of the monopole to the nearest residential property (369' +/-). Johnson reminded the Board that the bylaw addresses a reduction in the tower setback. He also noted that National Grid has a right to access the property & to put transmission lines in the easement, but they cannot impose any restrictions on the property owner. Brown read the National Grid letter stating their opposition to the monopole due to potentially negative affects it could have on the utility wires if it were to fail. Johnson argued that utility poles throughout town would cause damage if they failed & they are not certified, like the monopole is, by an engineer.

Residents Will Song, 7 Chongris Circle, & Keith Saxon, 15 Wethersfield Drive, voiced concern monopole failure & potential negative impact on reliability of electrical service. Bhanu Shanmugharadhya, 1 Chongris Circle, submitted a petition against the monopole signed by 26 residents. The Board discussed the visibility of the existing 400' radio tower, whether or not that impacted the residential abutters' decision to purchase their homes & the fact that equipment will be moved from the radio tower to the monopole. Brown informed the Board & the public that he drove by to view the site from Chongris Circle. Attorney Edward Pare, for AT&T, mentioned the RF Engineer's certification that the RF emissions will be well below the Federal guidelines. He cautioned the Board that they can discuss emissions, but not base their decision on the data related to health concerns. The Board discussed how the monopole & guy wires withstand a catastrophic event compared to trees & utility poles. McAllister shared that new regulations were created subsequent to Super Storm Sandy requiring easements to be kept clear. He noted that in a catastrophic event, first the trees would fail, then utility wires/poles, then houses, and finally the monopole. Joanne Stinson, 8 Matthew St., shared that there is a moratorium on fire house rooftop cell antenna installations as declared by the International Association of Fire Fighter Safety. Chief Mansfield emphasized that the moratorium is specific to roof-top antennas and that the proposed monopole will decrease any adverse risk to the firefighters. Mansfield read a statement on behalf of the Andover Public Safety Departments in favor of increasing communication transmissions in West Andover & throughout town and the significance of this one chance to improve radio transmissions with the installation of this proposed monopole.

McAllister introduced George Valentine, a certified general appraiser, who summarized his findings that there is no significant negative impact on sales due to cell towers. He noted that part of his research included interviewing the tax assessor who stated that tax assessments are never decreased, nor have they received abatement requests due to the proximity of a cell tower to a residential structure. The Board discussed concerns of the distance of the relocated proposed monopole to the guyed wires & whether or not it is necessary for the applicant to file for relief from the WPOD. Johnson assured the Board that if a filing is necessary, they will do so with the Planning Board.

[Clerk Magenheim arrived at 8:37 p.m.]

Inspector of Buildings presented some options for on-site fuel storage facilities within the WPOD, but it is uncertain if a special permit is required. Johnson stated that they would agree to conditions restricting the use to home heating oil or propane, the same fuel used by houses within the WPOD. Oltman made a motion to close the public hearing & to continue the deliberation to 8/4/16. McDonough seconded the motion & the Board voted (5-0) to close the hearing & continue the deliberation at the 8/4/16 meeting.

**Petition Number: Z-16-58**

**Premises Affected: 6 Black Horse Lane**

**Petitioner: Homestead**

**Relief requested: special permit under Art. VIII, §3.1.3.F.4 to create a Family Dwelling Unit within the existing single family dwelling**

**Members sitting: Brown, Magenheim, McDonough, Oltman, Rechisky**

**Alternate: Faulk**

This is a continuation of the public hearing that was opened on June 2, 2016.

Mike Tryder, representing Black Hawk Builders on behalf of the applicant, submitted copies of Mrs. Robichaud's letter naming her mother as the intended occupant of the proposed family dwelling unit. The Board discussed the length of time that the dwelling has been under construction in relation to the special permit request & the projected move-in date. Tryder stated that it is his understanding that the owners intend to occupy the house by October 2016 & that it was always the intent to have Mrs. Robichaud's mother live with them. Tryder informed the Board that Janet Robichaud is the sole trustee. Inspector of Buildings Chris Clemente summarized his letter to the Board regarding the discussions that took place prior to issuance of the building permit for the single family dwelling & the understanding that a family dwelling unit was not planned. Brown informed Tryder of the 5 year limitation & renewal process for a special permit allowing a family dwelling unit. Clemente assured the Board that due to the size of the house, it is fully sprinklered. There being no other questions or comments, McDonough made a motion to close the public hearing. Rechisky seconded the motion & the Board voted (5-0) to close the hearing. The Board then proceeded to deliberate.

The Board discussed options for tracking family dwelling units. Currently there is no tracking system other than the conditions in the decision & the good-faith of the applicants to apply for renewals. Brown suggested granting a special permit with the usual conditions restricting the occupancy to Mrs. Robichaud's mother and an annual certification. Clemente explained that it is incumbent on the permit holder to be in compliance. Magenheim made a motion to grant the special permit for the family dwelling unit specifically to Janet Robichaud for 5 years. McDonough seconded the motion & the Board voted (5-0) to grant the special permit with conditions. McDonough will draft the decision.

**Petition Number: Z-16-59**

**Premises Affected: 233 Lowell Street**

**Petitioner: Andover Animal Hospital**

**Relief requested: modification certain conditions of Decision No. 1723 to allow the continued operation of the animal hospital under different ownership**

**Members sitting: Brown, Magenheim, McDonough, Oltman, Rechisky**

**Alternate: Faulk**

This is a continued hearing. Attorney Mark Johnson represented the applicant, Diane Tower, who was also present. Brown summarized a draft decision with alternate conditions. He gave a copy to Johnson. Johnson explained that his client does not want the approval to be forever limited to the Lindsey-Tower family, therefore he submitted proposed conditions in a letter dated 7/1/16. The Board discussed the various conditions with Johnson, Johnson expressing preference for alternate 1 in his letter, and for the occupation of 'a' house attached to or on the same lot adjacent to the hospital, rather than "the" house. Brown noted for the record a letter of support from Lorrie Scolaro, 241 Lowell Street. Magenheim clarified for the record that Laurie Scolaro was in favor of the original request, limited to Diane Tower's operation of the animal hospital. Several other residents support Tower's operation of the hospital and restricting the use to owner-occupied. There being no other comments or questions, Oltman made a motion to close the public hearing. McDonough seconded the motion & the Board voted (5-0) to close the public hearing. The Board then proceeded to deliberate.

Brown suggested adopting his draft approval with Johnson's alternate 1 condition. Oltman noted that the references to the Lindsey family should be replaced with the Tower family. Faulk cautioned the Board that 3 of the closest abutters voiced concern over changing the original request. She suggested voting on the original request or allowing abutters a chance to voice their concerns if the request is modified. Oltman & Magenheim agreed. Magenheim made a motion to grant the requested modifications of Decision No. 1723 as set forth as alternate 1 in the proposed draft written by Brown with the finding that it is consistent with the original intent of the continuation of an owner-occupied operation. Brown submitted the most recent deed for the Andover Animal Hospital in order to change the deed reference in the decision. McDonough seconded the motion & the Board voted (5-0) to approve the modifications of Decision No. 1723.

**Petition Number: Z-16-48**

**Premises Affected: 319 Lowell Street**

**Petitioner: Lupoli**

**Relief requested: variances §§4.1.2, 5.3.4 & 5.1.5.2.b to construct a 2-story building & parking structure that will not meet minimum building, parking & landscape buffer setback requirements and for special permits §§3.1.3.C.12.a & 3.1.3.C.15 to allow use of the building as a sit-down restaurant and business, professional or administrative offices**

**Members sitting: Brown, Magenheim, McDonough, Oltman, Faulk**

**Alternate: Rechisky**

Rick Friberg, Project Engineer with TEC, recapped the proposal, highlighting the changes since the last meeting: building size decreased from 4400 sq. ft. to 3600 sq. ft., building location shifted west thereby increasing the front setback so it no longer requires zoning relief and increasing the side yard setback to the buffer and the outdoor seating patio was moved to the front corner. The Board discussed the decrease in the overall number of proposed parking spaces & that the total number of proposed spaces meets the requirement. Friberg presented the hardship as the narrow shape of the lot making it impossible to develop the lot with a building and parking while meeting setbacks without incorporating it into the adjacent lot with the existing medical buildings. As for the special permit for the use, Friberg reminded the Board that it is in their purview to allow such a use by granting a special permit.

He also presented the sloping topography of the lot as a hardship. The Board discussed whether the proposed use meets the social & economic needs of the community and the proposed food service use exists in the medical buildings on the adjacent lot. Friberg stated that there are no on-site amenities currently and the subject lot can't be developed without zoning relief regardless of the proposal. Sal Lupoli spoke regarding his willingness to accept conditions of approval for the restaurant / coffee house use that no liquor shall be served, no deliveries shall be made and the restaurant may not be open unless the medical office buildings are open, with a limit of 12 seats. He also agreed to restrict the restaurant to prohibit take-out service. The Board discussed whether such a restriction is necessary and the bylaw's allowance of a sit-down restaurant. Friberg noted that the plan calls for 18 seats plus patio seating with a designated loading area on the top deck for deliveries & trash to be removed in roll-off bins to be deposited in on-site dumpsters.

Keith Saxon, 15 Wethersfield Dr, submitted his concerns arguing that the hardship is self-created, that the application lacks a request for relief from maximum lot coverage requirements & for development within the WPOD, Zone A. Saxon also requested for trees to be planted. Friberg pointed out that the lot was previously zoned residential & the lot depth can't be increased. He also noted that the lot would be merged with the adjacent lot and therefore wouldn't exceed 30% maximum lot coverage. The concern regarding the WPOD will be addressed with the Planning Board. Friberg responded regarding the trees that Lupoli does not currently own the lot & they do not know who cut the trees. Brown reminded the applicant that unless & until the lot is purchased, the comprehensive permit that was subject of a previous decision isn't modified and the existing single family dwelling is required to be an affordable unit. Lupoli agreed, reiterating that he does not currently own the lot in question.

John Sarro, Executive Director of Pentucket Medical Associates, fully owned by Partners Healthcare System with Massachusetts General Hospital (MGH), addressed the Board regarding the opportunity in this project to expand in the Merrimack Valley and MGH's parking needs based on the square footage of a building rather than the number of exam rooms. The Board discussed the feeling that the approval needs to be contingent upon a written agreement & MGH's documented requirement for parking, as well as the fact that the end-cap building idea came from town staff. Charlie Erban, 249 Lowell Street, urged the Board to read Heather Lawton's email regarding traffic concerns on Lowell Street. Dick Santigatti, former Chair of the Board of Lawrence General Hospital, which is a partner & tenant, spoke in favor explaining that they wish to bring top health care to the area eliminating the need to drive to Boston. Linda Persecetti, manager at Pentucket Medical Center in Andover, informed the Board that there are daily parking issues on site & that more parking is needed. The Board discussed current parking issues & a management plan for employee parking.

Nuala Boness, Robinswood Way, spoke against another building. Joe Albuquerque, Greenwood Rd, voiced concern over public safety due to traffic, as well as the school busing schedule. Brown asked for the status of other applications & requested documentation of an agreement between Lupoli-MGH-Pentucket, as well as to file with all other boards to start the process. Friberg emphasized that without zoning relief, no other applications would be filed. McDonough asked for a sense of the Board. Rechisky noted her favor for the proposal along with concern for the end-cap use as well as understanding of traffic concerns & the topographical challenges of the site. Magenheim acknowledged that WPOD issues will be dealt with by the Planning Board. McDonough agreed that medical facilities have food-service, but voiced concern over the 2<sup>nd</sup> story of the end-cap. Oltman stated that she had no further comments. Brown agreed with the other members. Selectman Paul Salafia informed the Board that an IDR had been held regarding this proposal. There being no other questions or comments from the public or the Board, McDonough made a motion to continue the public hearing to the 8/4/16 meeting. Magenheim seconded the motion & the Board voted unanimously to continue the hearing.

**Approval of Minutes:**

Minutes of 5/5/16 & 6/2/16, with Brown's revisions submitted by email to the administrative secretary – Magenheim made a motion to approve the minutes of 5/5/16 & 6/2/16 with Brown's revisions. Oltman seconded the motion & the Board voted unanimously to approve the minutes as revised.

There being no other business of the Board, Oltman made a motion to adjourn the meeting. McDonough seconded the motion and the Board voted unanimously to adjourn the meeting at 11:12 p.m.

Respectfully submitted,  
Barbara Burke  
Administrative Secretary